

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Removal of Customized Postage from the
Mail Classification Schedule

Docket No. MC2020-126

PUBLIC REPRESENTATIVE COMMENTS
(May 18, 2020)

On May 1, 2020, the Postal Service filed a request to remove Customized Postage from the Mail Classification Schedule.¹ The Commission issued a public notice of the filing on May 4, 2020, in which it appointed the undersigned as Public Representative and established May 18, 2020, as the deadline for submitting comments.²

I. BACKGROUND

The Postal Service states that it established the Customized Postage program in 2004. Request at 1. Under the program, “authorized vendors offer customers the ability to personalize postage indicia using the customers’ own images or text.” *Id.* On January 13, 2010, Customized Postage was added to the Mail Classification System (MCS) as a stand-alone Special Services product on the Market Dominant Product List.³

II. THE POSTAL SERVICE’S REQUEST

The Postal Service states that the Customized Postage program was adopted “as a means to generate additional revenue.” Request at 1. It states further that personalized stamps “pose unique risks because they share the appearance and function of U.S. postage

¹ Request of the United States Postal Service to Remove Customized Postage from the Mail Classification Schedule, May 1, 2020 (Request).

² Notice and Order Concerning Removal of Customized Postage from the Mail Classification Schedule, May 4, 2020, at 3 (Order No. 5499). A Postal Service notice of its filing was subsequently published in the Federal Register. See Elimination of Customized Postage Products, 85 Fed. Reg. 28045 (May 12, 2020).

³ Docket No. MC2009-19, Order Approving Addition of Postal Services to the Mail Classification Schedule Product Lists, January 13, 2010, at 30 (Order No. 391).

stamps.” *Id.* at 1-2. To address those risks, the Postal Services adopted regulations governing the program.⁴

The Postal Service’s regulations “restrict Customized Postage content” by establishing eligibility criteria for “images and/or text” used in Customized Postage products. 39 CFR § 501.21(b). Among other things, paragraphs (c)(1) and (c)(2) require vendors to make the eligibility criteria available to customers and to maintain a process that uses only the Postal Service’s eligibility criteria in providing or accepting images and/or text for Customized Postage products. Paragraph (c)(7) authorizes the Postal Service to suspend or revoke a vendor’s authorization to produce Customized Postage products on several grounds. Grounds for revocation or suspension include a Postal Service determination that Customized Postage products or vendor processes “constitute an unacceptable risk to Postal Service business interests, including legal, financial, or brand interests.” *Id.*

According to the Postal Service, eligibility criteria “have become the source of customer complaints and the subject of legal disputes.” Request at 2. In addition, vendors have left the program because of industry consolidation, lack of demand, or determinations by the Postal Service to discontinue their authorizations because of quality issues. *Id.* at 3. The Postal Service states that “as of June 16, 2020, there will no longer be any authorized vendors for the Customized Postage program.” *Id.* at 2. As the number of authorized vendors has declined, so, too, have demand for and revenue from the program. *Id.* These factors led the Postal Service to reevaluate the program to determine whether its benefits outweigh the business risks. *Id.* The Postal Service has concluded that “the Customized Postage program constitutes an unacceptable risk to the Postal Service’s business that outweighs any countervailing benefits....” *Id.*

⁴ *Id.* at 2. See 39 CFR § 501.21.

III. COMMENTS

A. Contents of the Request

Section 3040.131(e) of the Commission's regulations requires that requests to modify product lists provide all supporting justification upon which the Postal Service proposes to rely. 39 CFR § 3040.131(e). Section 3040.132 requires that the supporting justification "shall be in the form of a statement from one or more knowledgeable Postal Service official(s) who sponsors the request and attests to the accuracy of the information contained within the statement." 39 CFR § 3040.132. The Postal Service has traditionally satisfied this requirement by attaching an appendix to its requests in the form of a statement by an appropriate Postal Service official that addresses the subjects enumerated in section 3040.132.⁵

In this case, the Postal Service has substituted a single sentence in its Request for the traditional attachment containing a discussion of the subjects enumerated in section 3040.132.⁶ The result is that a number of key representations in the Request are, at most, conclusory assertions unaccompanied by information that could more fully inform the Commission regarding, in particular, "the nature, scope, significance, and impact of the proposed modification" as required by 39 C.F.R. §3040.132(i).⁷

⁵ See, e.g., Docket No. MC2013-38, Request of the United States Postal Service to Remove Confirm Service from the Market-Dominant Product List, Appendix B—Statement of Supporting Justification, February 1, 2013.

⁶ The Request contains the following sentence: "The factual statements contained herein are attested to by Christopher Karpenko Executive Director of Brand Marketing, United States Postal Service." Request at 1.

⁷ The Public Representative is not challenging the form of the Postal Service's submission, *per se*. Given the fact that the Postal Service filed its Request during an ongoing global pandemic, it is understandable that practical considerations could have made preparation and assembly of the Request in its traditional form impossible. Rather, it is the appearance that the omission of the supporting justification in its traditional form has resulted in a truncated explanation of important aspects of the basis of, and justification for, the proposed removal of Customized Postage from the MCS.

B. Supporting Justification

1. 39 CFR § 3040.132(a).

Subsection (a) requires a demonstration that the proposal is in accordance with the policies and applicable criteria of 39 U.S.C. chapter 36. The Request does not address this subsection. See Request, *passim*. The Public Representative interprets the Request to address subsection (a) through the Postal Service's responses to subsections (b) through (i) of 39 CFR § 3040.132. As discussed below, the Public Representative submits that the Postal Service's responses to several of these remaining responses require additional information to permit the Commission to make an informed decision.

2. 39 CFR § 3040.132(b).

Paragraph (b) of section 3040.132 requires an explanation of why the change is not inconsistent with each requirement of 39 U.S.C. 3622(d) and advances the objectives of 39 U.S.C. 3622(b), taking into account the factors of 39 U.S.C. 3622(c). The Postal Service states that "none of the factors and objectives of 39 U.S.C. § 3622 are directly applicable here...." It nevertheless finds that the removal of Customized Postage is "consistent with the spirit of Section 3622" because "the import of Section 3622 is to ensure that the Postal Service's rate system is balanced and generates adequate revenue." Request at 4-5.

The Postal Service's position regarding the applicability of the objectives and factors in section 3622 to the Customized Postage program is significantly different from the position it took at the time the program was added to the MCS. In its response to Chairman's Information Request No. 1 in Docket No. MC200-19, the Postal Service stated that Objective 2 (to create predictability and stability in rates) and Objective 5 (to assure adequate revenues, including retained earnings, to maintain financial stability) both applied to the Customized Postage program.⁸ The Postal Service stated further that "[b]y increasing revenues and mail volumes, thus enhancing predictability and stability in rates, this program satisfies both objectives 2 and 5." *Id.* With regard to the factors in section 3622(c), the

⁸ Docket No. MC2009-19, Responses of the United States Postal Service to Chairman's Information Request No. 1, May 29, 2009, question 4.

Postal Service asserted that the Customized Postage program “enhances ‘the relative value to the people of the kinds of mail matter entered into the postal system and the desirability and justification for special classifications and services of mail’ (factor 8).”

Accordingly, the issue is not, as the Postal Service argues, whether the removal of the Customized Postage program is “consistent with the spirit of Section 3622.” Rather, it is whether removal of the program “advances the objectives” of section 3622(b), “taking into account the factors” of section 3622(c). Moreover, as discussed below, the Postal Service’s allegations of “unjustified risks”, and “harm to its brand with a negative impact on its revenues” are, without more support, nebulous and speculative. Finally, the Postal Service has not addressed how Factor 8 would be advanced by removal of the program from the MCS.

3. 39 CFR § 3040.132(c) - § 3040.132(e).

Paragraphs (c) through (e) of section 3040.132 address additions, deletions, and transfers of competitive products. Customized Postage is a product on the Market Dominant Product list. These subsections are therefore inapplicable. See Request at 1 n.1.

4. 39 CFR § 3040.132(f).

Paragraph (f) of section 3040.132 requires a description of the availability and nature of private sector enterprises engaged in the delivery of the product. The Postal Service addresses this requirement by suggesting that the impact of its proposal can be minimized by turning to alternatives. Request at 3-4. The alternatives identified by the Postal Service include its stamp program and various products, such as return address labels, to customize their mailings. *Id.*

The Postal Service’s discussion is not responsive to the requirements of subsection 3040.132(f). That subsection seeks a description of private sector enterprises that engage in the delivery of the product. By definition, the Postal Service’s stamp program is neither customized postage, nor is it provided by a private enterprise. And the alternatives identified by the Postal Service that are provided by private sector enterprises are not customized postage. Unless other private sector enterprises that provide customized postage can be

identified, it appears that the only enterprises that provide customized postage are those that participate in the Postal Service's Customized Postage program.

5. 39 CFR § 3040.132(g).

Paragraph (g) of section 3040.132 requires any available information regarding the views of the product's users on the Postal Service's proposed elimination of the product from the MCS. Although the Postal Service asserts that removal of the Customized Postage program from the MCS will be minimal, it anticipates objections from some industry participants. Request at 4. The Commission's notice in this proceeding provides the opportunity to learn the views of program participants.

6. 39 CFR § 3040.132(h).

Paragraph (h) of section 3040.132 requires a description of the likely impact of the Postal Service's proposal on small businesses. The Postal Service expects the impact to be minimal. Request at 3. It infers minimal impact from what it characterizes as weak and declining demand and associated revenues. *Id.* The Public Representative submits that impact of removing Customized Postage from the MCS will depend not only upon the volume and revenue data presented by the Postal Service, but upon any additional information that may be presented in comments, if any, filed by affected small businesses.

7. 39 C.F.R. § 3040.132(i).

Paragraph (i) of section 3040.132 requires "such information and data, and such statements of reasons and bases, as are necessary and appropriate to fully inform the Commission of the nature, scope, significance, and impact of the proposed modification." The Postal Service addresses this requirement on pages 2-3 of its Request. There, it identifies the following 6 aspects of the program which, it asserts, support removal of Customized Postage from the MCS: (1) customer complaints regarding the eligibility criteria for participation in the program; (2) legal disputes; (3) quality issues; (4) harm to Postal

Service business interests; (5) declining vendor participation; and (6) declining demand, volumes, and revenues.⁹

From the Postal Service's description of customer complaints regarding eligibility criteria it is impossible to assess their seriousness. Under the Postal Service's regulations described above, vendors who participate in the program are responsible for applying the eligibility criteria. See 39 CFR § 501.21(c)(2). Accordingly, it would appear that most controversies over the eligibility criteria would first be addressed by vendors, not the Postal Service. While the Postal Service retains the right "to determine independently" whether images or text meets the eligibility criteria, see 39 C.F.R. §501.21(b)(4), the Postal Service's request gives no indication of the number or seriousness of controversies it has had to address.

Similarly, the Postal Service relies upon alleged legal disputes as a reason for removing Customized Postage from the MCS. Without some explanation of the frequency, nature, and specific risks presented by these legal disputes, this allegation is also impossible to assess.

Quality issues are cited by the Postal Service as a reason for discontinuing a vendor's authorization. Request at 3. The Postal Service does not, however, give any indication of the extent of such quality issues (e.g., how many such authorizations have been discontinued because of quality issues, or the time period over which discontinuances occurred). Without further explanation by the Postal Service, it is impossible to assess the scope and seriousness of such issues from the program's overall perspective.

The Public Representative recognizes that the alleged problems discussed above could, alone or in some combination, produce genuine damage to the Postal Service's business interests and should not be ignored. But a determination of whether such genuine damage has occurred, or is likely to occur requires more information than has been provided in the Request.

⁹ Other aspects of the program, including impact of the program's removal on small businesses and consumers and views of the program's participants, are discussed, *supra*, in connection with other paragraphs of 39 CFR §3040.132.

The alleged decline in vendor participation also raises a number of questions. For example, what was the peak number of participating vendors and in what year was the peak reached? Have vendors voluntarily withdrawn from the program, and, if so, how many and over what period of time? How many vendors have been involuntarily removed from the program by the Postal Service and for what reasons? How much of the decline has been due to the industry consolidation referred to by the Postal Service and have the consolidated companies continued, reduced, or discontinued providing Customized Postage under the program?

Finally, the Postal Service alleges that declining demand for the product, declining volumes, and declining revenues all support removal of Customized Postage from the MCS. As evidence of declining demand, the Postal Service cites a decline in mail pieces between FY 2017 (38,960,509) and FY 2019 (15,972,708); a reduction in the number of requests for new authorizations; the absence of “serious” inquiries for new authorizations “in some time”; and the Postal Service’s revocation of the last remaining authorization effective June 20, 2020. Request at 2-3. With respect to revenues, the Postal Service states that revenues have declined between FY 2017 (\$21 million) and FY 2019 (\$10.45 million). *Id.* at 3. It claims further that even without the program, it would have received most of these revenues. *Id.*

The source of the volume and revenue figures cited by the Postal Service is not identified. Moreover, these figures appear to come from sources that differ from those used by the Postal Service in its Annual Compliance Reports. For example, in its FY 2017 Annual Compliance Report (ACR), the Postal Service does not show any volumes for Customized Postage and annual revenues were reported to be approximately \$900,000.¹⁰ It appears that these latter revenues are annual participation fees paid by vendors and not postage. While the participation fees are small, it must be noted that the cost coverage for the Customized Postage program in FY 2017 was 1,353.08 percent. *Id.* In FY 2019, what appear to be participation fees declined further, but the cost coverage was still a comfortable 383.25 per

¹⁰ See Docket No. ACR2017, United States Postal Service FY 2017 Annual Compliance Report, December 29, 2017, at 43, Table 12: Special Services Volume, Revenue, and Cost by Service/Product.

cent.¹¹ Finally, the Postal Service fails to provide the basis for its belief that it would have received most of the revenues cited in its Request even if the Customized Postage program were not in effect.

The significance of the revenues discussed by the Postal Service lies in the Postal Service's comparison of revenues with the risks of continuing the program. To assess whether the risk/reward balance justifies termination of the Customized Postage program, the risks and rewards used to determine the balance must be properly supported and explained.

IV. CONCLUSION

Before acting on the Postal Service's Request, the Commission should explore the matters raised by the questions and issues discussed herein.

Respectfully submitted,

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¹¹ See Docket No. ACR2019, United States Postal Service FY 2019 Annual Compliance Report, December 27, 2019, at 33, Table 13: Special Services Volume, Revenue, and Cost by Service/Product.